HONG KONG

AFTER THE BASIC LAW

by Hsin-chi Kuan

The Institute for Research on Public Policy
L'Institut de recherches politiques

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Foreword

Although at various times in Canadian history Hong Kong has played an important role, one could argue that never has its influence been as significant as it is now. Hong Kong has become Canada's number one source of immigrants and an increasingly important source of investment funds.

Fuelled by concerns that China's reassertion of sovereignty in 1997 will mark the end of its prosperity, Hong Kong is now being drained of critical human and financial resources. Canada is, of course, not the only country to which Hong Kong's people and money have fled: countries such as Australia and the United States have also been on the receiving end of this exodus. However, Canada, and British Columbia in particular, has been the beneficiary of a surprising amount of this wealth. In 1989 close to 24,000 Hong Kong Chinese emigrated to Canada, an estimated 20 percent of Hong Kong's worldwide investment was placed in B.C., and Hong Kong real estate holdings in Canada's major urban centres expanded rapidly. These massive transfers are literally changing the face of cities such as Vancouver.

For Canada, Hong Kong's dilemma can be viewed as a mixed blessing. On the one hand, the infusions of financial and human capital are positive additions to the Canadian economy. On the other hand, the startling rate at which these flows have escalated over the last 5 years has generated a very difficult task of integration and worrisome racial tensions have surfaced.

However, even if integration problems can be minimized, it would nevertheless be selfish and shortsighted for Canada, as well as other nations, to view the haemorrhaging of Hong Kong's resources with equanimity. Hong Kong, as a locus of dynamic economic entrepreneurship, is of great future benefit to the global economy. Furthermore, given China's recent brutal crackdown on its nascent democracy movement, the international community must also be concerned about future treatment of Hong Kong's citizens and the curtailment of their freedoms. The world community clearly has both economic and ethical interests in supporting a stable, prosperous and open Hong Kong which can serve effectively as an engine in the transformation of China itself into a stable and prosperous participant in the global community.

Given these considerations, the Institute for Research on Public Policy believed that it was important for Canadians to gain a better understanding of developments in Hong Kong as it approached the 1997 transfer of its sovereignty to China. The Institute engaged Professor H.C. Kuan, a noted scholar at the Chinese University of Hong Kong who has worked with the Institute on other projects, to prepare the following paper which examines Hong Kong's future with particular reference to its recently promulgated constitutional foundation—the Basic Law.

Professor Kuan was also asked to address the issue of what the international community might do to help ensure Hong Kong's continuing economic viability and dynamism post-1997. His suggestions, which are presented in the following preface, challenge decision-makers in the public and private sectors alike to take action to support a vibrant and internationally active Hong Kong.

Rod Dobell
President
September 1990

Preface

WHAT THE INTERNATIONAL COMMUNITY CAN DO

For over a century, Hong Kong has served as the linkage between China and the world. The free and international character of Hong Kong has ensured China a window to the world and the West a gateway to China. Notwithstanding the Chinese open-door policy, the future of Hong Kong lies in the continuance of that role. The government of Hong Kong has recently become active in external affairs, with a view to promoting and strengthening the international linkages of Hong Kong. It is in the interest of the international community to contribute to this same objective.

First and foremost, Hong Kong should be assured of a status in the international community, especially through membership in non-political international organizations. Membership in such organizations will serve to underline Hong Kong's autonomy in conducting its external commercial relations, now and after 1997, as already laid down in the Basic Law and reaffirmed by the Chinese government and will enable Hong Kong to contribute to economic cooperation as an international trade and financial centre. (Hong Kong is now the world's 11th largest trading entity, with trade totalling US$127 billion in 1988, representing 2.2 percent of world trade or 233 percent of Hong Kong's GDP. Hong Kong is the world's third or fourth largest financial centre, with 76 out of its 102 licensed banks ranked among the top 100 in the world,

and over 40 percent of the sector's aggregate assets and liabilities held externally, spread over more than 80 countries.)

Hong Kong became a contracting party of the GATT in 1986, distinct from Britain on the basis that it is a separate customs territory with full autonomy in the conduct of its external commercial relations. It is currently an active participant in the Uruguay Round of the MTN. Its secretary for trade and industry also participated in GATT ministerial level meetings. Apart from GATT, Hong Kong participates in 29 international organizations. In 26 of these, the Chinese government has agreed that the nature of its participation shall remain the same after 1997. In the remaining three organizations, autonomous participation has yet to be discussed with the Chinese. (A full listing of the international organizations that Hong Kong belongs to is given in Annex 1.)

Hong Kong's membership in Asian and Pacific institutions is especially crucial in view of the fact that as much as 78 percent of Hong Kong's trade is with members in the Asia Pacific region. Hong Kong has participated in some of the task forces and fora held by PECC (Pacific Economic Cooperation Conference) as observers or guests. A PECC national committee has been set up and has applied formally for membership. No member seems to object to Hong Kong's application, but it has been complicated by applications from some Latin American countries for membership. As the Standing Committee of PECC has not formulated a policy to deal with Latin American applicants, the approval of Hong Kong's membership was postponed until the September 1990 meeting in Jakarta. (Editor's note: The applications for membership in PECC by Hong Kong, Mexico, Chile and Peru have now received approval by the Standing Committee.) By contrast, the participation of Hong Kong in APEC (Asia Pacific Economic Cooperation) was abortive. Initiated by Prime Minister Hawke of Australia, APEC was attended by government ministers for the first time last winter. Since China insisted that only sovereign nations could participate, it was decided that neither China, Taiwan or Hong Kong would be invited.

The APEC episode reminds one of the old dispute over Chinese membership in international organizations, known as the two-China policy. With Hong Kong now coming into the picture, the

debate appears to involve not only two Chinas, but three. However, the Hong Kong dimension differs in a fundamental sense. Unlike China and Taiwan, Hong Kong does not seek status as an independent political entity in the international community. National sovereignty is not at stake. This is not true for China and Taiwan, with the former insisting on "one country, two systems" and the latter on "one state, two governments". Strictly speaking, therefore, there is no three Chinas issue, but a two-and-a-half, or a two China, one Hong Kong issue.

The crux of the problem is one of representation. The solution lies in the recognition that representation need not be political, at least not all the time, and representation is divisible in terms of areas of activities. The deadlock over the issue in the past resulted from the hostile environment in which China and Taiwan found themselves. Despite the deadlock, ingenious formulas have been found to allow specific forms of representation to promote international cooperation and understanding. As an aftermath of the June 4 incident, the APEC episode is unfortunate. The longer-term outlook is, however, optimistic. With the trend of waning hostility among the divided parts of China, the issue over Chinese memberships should be susceptible to more satisfactory solutions.

Another dimension of Hong Kong's international status is the presence of the international community in Hong Kong. This presence can be multi-faceted. International and regional organizations can establish headquarters, field offices or branches in Hong Kong. In the same vein, national governments or non-governmental public bodies such as the Canadian IDRC can set up regional offices or centres in Hong Kong to coordinate their social, economic and cultural activities in the Asia Pacific region. Last but not least, the presence of international business and investment will contribute significantly to the prosperity and stability of Hong Kong. Despite the teething problems of political transition, the investment environment of Hong Kong continues to be sound. The long-term prospect of China trade is bound to enhance the linkage role of Hong Kong. Foreign investors will find Hong Kong a good place for supporting regional manufacturing and trading.

Another way the international community can support stability in Hong Kong is to help it keep its people. While it is

critically important for Hong Kong to let people emigrate freely, the trend of massive exodus since 1984 is very worrying. It is estimated that for Hong Kong to continue to tick, it needs approximately 300,000 functional core members of elites of various kinds. The persistence of massive emigration may well inflict self-destruction on Hong Kong. Therefore, while increases in immigration quotas or relaxation in the qualifications for immigration will satisfy the individual needs of passport seekers, they will not do justice to Hong Kong as a whole. If a national government really wants to help Hong Kong, it should adopt an immigration policy designed to retain people there.

The British scheme of right of abode is an example of such a policy. It grants full citizenship to 50,000 selected households, or 250,000 people, in Hong Kong without any residential requirements. While many beneficiaries of the scheme will eventually emigrate to Britain, its immediate effect is expected to delay the present exodus of strategic elites in Hong Kong. The reservation of 15 percent of the quota, that is 6,500 passports, to be dispensed only nearer 1997 is a well-calculated measure to retain critical elites. Although deferring the collapse of the British administration in Hong Kong closer 1997 is a probable outcome of such a scheme, the present value of "buying time" is still considerable.

Other national governments may find it difficult to follow the British footsteps, since they do not have the same moral obligation towards Hong Kong. But they may, in a comparable spirit, help Hong Kong by the following immigration measures:

1. Grant or promise immigration visas with postponed dates of effect to people employed by governmental institutions, such as consulates-general or local branches of a national bank of a foreign country;
2. Continue with existing immigration policy but relax the requirements concerning the date of departure after the granting of the immigration visa;
3. Continue with the existing immigration policy but allow greater flexibility in the calculation of the required length of continuous residence; and

4. Continue with the existing immigration policy but adopt a more tolerant attitude towards new immigrants (e.g., U.S. green card holders who may find it hard to quickly abandon their residence in Hong Kong).

There are many other small ways in which the international community can help Hong Kong outlive the transition unscathed, including recognition of professional qualifications on reciprocal basis, promotion of academic, cultural and other linkages, and setting up of societies concerned with Hong Kong. Whatever the international community does, however, the people of Hong Kong will appreciate the effort.

Hong Kong After the Basic Law

1. INTRODUCTION

Hong Kong is "a borrowed place, borrowed time."[1] It was borrowed as a British colony by a series of what the Chinese government regards as "unequal treaties". It is on borrowed time since the bulk of Hong Kong's territory, known as the New Territories, was leased in 1898 to Britain for a period of 99 years and that lease expires on July 1, 1997.[2] The different parts of Hong Kong are now so economically integrated that without the leased New Territories, the ceded Victoria island and Kowloon could not survive independently.

In 1979, the British government threw out a feeler to the Chinese to see whether the place and time could be further borrowed. For the Chinese, however, the reassertion of sovereignty over Hong Kong was not open to debate and Sino-British negotiations on the future of Hong Kong started in 1982. The British government, having failed to secure any form of British presence in Hong Kong after 1997, subsequently concluded an agreement with its Chinese counterpart on September 26, 1984 on the transfer of sovereignty. In return it received a Chinese pledge to grant Hong Kong a high degree of autonomy under the principle of "one country, two systems."[3] A Sino-British Liaison Group was established in 1985 to coordinate necessary transitional measures for the implementation of the agreement. In the same year, a Basic Law Drafting Committee (BLDC) was established by the National

People's Congress (NPC) of China to draft a mini-constitution for the future Hong Kong Special Administrative Region (HKSAR). Of the 59 members of this committee, 23 were from Hong Kong. The BLDC members from Hong Kong were given the task of forming a 180-member Basic Law Consultative Committee (BLCC) to galvanize public opinion in Hong Kong.[4]

On April 4, 1990, the NPC of the People's Republic of China adopted the Basic Law of the Hong Kong Special Administrative Region and a series of related decisions. The Basic Law prescribes the systems to be practised in the HKSAR when sovereignty is transferred to China. These systems are supposed to ensure China's basic policies regarding Hong Kong, as spelled out in the Sino-British Joint Declaration which came into effect on May 27, 1985.

This paper highlight some major provisions of the Basic Law and examines the main trends of political development after its promulgation. Special reference is made to the issues of maintaining a high degree of autonomy and preserving the capitalist system and lifestyle.

2. AN ANALYSIS OF THE BASIC LAW

The Basic Law, totalling 160 articles, has a preamble, nine chapters and three annexes. The preamble proclaims the Chinese reassertion of sovereignty over Hong Kong on July 1, 1997, the establishment of a Hong Kong Special Administrative Region at the same time, and a pledge, under the principle of "one country, two systems", not to implement socialism in Hong Kong. The first chapter stipulates the basic principles governing the HKSAR, guaranteeing in particular a high degree of autonomy and the preservation of the capitalist system and way of life. Chapter two regulates the relationship between the central authorities and the HKSAR, with the latter being a local administrative region placed directly under the Central People's Government of China. Chapter three provides for the fundamental rights and duties of the Hong Kong residents. The political structure of the HKSAR is laid down in Chapter four. Economic and social policies of the future HKSAR

receive remarkably detailed treatment in Chapters five and six respectively. Chapter seven delineates the competencies of the HKSAR in external affairs. Chapter eight vests the power of amending the Basic Law in the NPC of China and that of interpretation in its Standing Committee. The last chapter confirms conditions under which laws in existence before July 1, 1997 and related legal documents, rights and obligations shall remain valid after the transfer of sovereignty. The three annexes to the Basic Law are an integral part of it, with significant implications for the political structure of the HKSAR. Annex I deals with the selection of the Chief Executive; Annex II with the formation of the Legislative Council; and Annex III specifies those national laws to be applied in the HKSAR.

In connection with the promulgation of the Basic Law, the NPC also adopted several important decisions. The decision on the method for the formation of the first government and the first legislative council of the HKSAR will shape the founding elections, with lasting impact on subsequent political development in Hong Kong; and the decision on the terms of reference for the Committee for the Basic Law of the HKSAR should prove vital for the future resolution of constitutional conflicts between the central government and the government of the HKSAR over interpretation of the Basic Law.

This study does not provide a comprehensive review of the Basic Law but, rather, confines its enquiry to whether the capitalist system and lifestyle can be preserved, a high degree of autonomy maintained and a democratic political system established.

Continuance of the Capitalist System and Lifestyle

The preservation of the socio-economic status quo was the least contentious issue during the drafting of the Basic Law, which enshrines two general principles to this effect: 1) the socialist system and policies shall not be practised in Hong Kong for 50 years after 1997; and 2) the previous capitalist system and ways of life shall remain unchanged (Article 5).

Do these two principles provide sufficient guarantee of the capitalist status quo? On constitutional grounds, they do not. They do, nevertheless, represent the best possible guarantee given the political circumstances associated with China's reassertion of sovereignty over Hong Kong. Enacted under the authority of Article 31 of the Chinese constitution, the Basic Law, as subordinate legislation, does not enjoy constitutional status in the Chinese legal system.[5] This raises two concerns. First, given that the Chinese constitution is applicable to Hong Kong, in order for the Basic Law to have any effect, Article 5 must contradict some provisions of the Chinese constitution, including the insistence on "the four cardinal principles".[6] Second, as a subordinate piece of legislation, the Basic Law can easily be changed by the National People's Congress. The first concern remains unresolved because the demand for an amendment to the Chinese constitution to enhance the status of the Basic Law has been turned down. The second was handled by giving Hong Kong an advisory role when changes to the Basic Law become necessary and by specifying in detail what sort of a socio-economic status quo is to be preserved. To advise on changes to the Basic Law and other related matters, a Committee for the Basic Law of the HKSAR will be established under the Standing Committee of the National People's Congress with six members each from the mainland and Hong Kong.[7] With regard to the preservation of the socio-economic status quo, the Basic Law is rather specific on what aspects of the existing capitalist system and ways of life are to be maintained and, in general, tends to reflect the people's desire for stability even at the expense of possible improvement to the existing systems.

Concerning economic life, the Basic Law stipulates specifically the preservation of the right to private property and free markets. Other related systems, such as shipping management and regulation and civil aviation management will also be maintained. In addition, a number of existing economic policies are supported in the Basic Law including keeping public sector expenditures within the limit of revenues, striving to achieve a fiscal balance and avoiding deficits, low taxation, full backing of currency issues by a reserve fund, absence of foreign exchange control and free trade.

In the area of social policy, provisions abound to retain or improve existing systems. Suffice here to examine education, religion and professions, since they receive more treatment than the other areas. In religion, freedom of religious belief and freedom to preach, conduct and participate in religious activities in public are recognized as fundamental rights in Chapter 3, Article 32. Article 141 in Chapter 6 further forbids the future government from tampering with these rights or interfering in the internal affairs of religious organizations. Existing and future property rights and interests of religious organizations are protected and they may maintain the right to develop their relations with religious organizations and believers elsewhere. These provisions are clearly designed to forestall the transplant to Hong Kong of Chinese practices against religions. In education, the autonomy and academic freedom of educational institutions is being preserved, as is students' freedom to choose the educational institutional at which they wish to study and the freedom to pursue overseas studies. The educational system itself, however, may be subject to changes on the initiative of the future HKSAR government. This same provision for change is also provided for the existing systems concerning the professions, while existing qualifications for professional practice are retained.

Maintenance of a High Degree of Autonomy

The autonomy of the future HKSAR has been the subject of ardent debate. The crux lies in a concrete realization of the principle of "one country, two systems". The Chinese side of the debate tends to emphasize the supremacy of the "one country" or the leading position of the socialist system in the "two systems", while the Hong Kong side strives to insulate the capitalist system against any conceivable intrusions. To the disappointment of many who argued for the apportionment of all residual powers to Hong Kong, as many federal countries do to their state governments, it turns out that the "high degree of autonomy" to be enjoyed by the HKSAR is no more than a delegated authority.

The nature of this delegated authority is obvious in Article 2 and Article 20. Article 2 stipulates that the National People's Congress of China "authorizes" the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. Article 20 foresees that other powers may be granted in future by the National People's Congress, its Standing Committee, or the Central People's Government. At the same time, it implies that some delegated authorities may also be withdrawn.

Given the nature of delegated authority, a further question can be raised as to the specific relationships between the central authority and the local one. How much exclusive jurisdiction within the already defined scope of power does the HKSAR enjoy? The extent seems large enough, but there are areas of concern.

Autonomy in terms of executive power is that which is least regulated in the Basic Law. The exercise of executive power in the HKSAR in a manner that poses no danger to China may be determined more by the political reality of whether the central government can determine the selection of the chief executive or influence him after 1997. Ultimately, however, the control of the central government is ensured by Article 43, which makes the chief executive of the HKSAR accountable to the Central People's Government.

With respect to the legislative power of the HKSAR, there are two important limitations on Hong Kong's autonomy. The first is the right of the Standing Committee of the Chinese National People's Congress to rule any law enacted by the legislature of the HKSAR as deviant from the provisions of the Basic Law and have it invalidated by way of referring it to Hong Kong. Two safeguards in favour of the HKSAR are provided for, however. First, the subject of the law in question must concern affairs within "the responsibility of the Central Authorities" or "the relationship between the Central Authorities and the Region". Second, the Standing Committee must consult the above-mentioned Committee for the Basic Law of the HKSAR.

The second limitation on Hong Kong's legislative autonomy applies to the existing laws—the common law, rules of equity,

ordinances, subordinate legislation and customary law. They are to be preserved as a matter of principle, except for any that contravene the Basic Law and subject to any amendment by the future legislature (Article 8). The expected procedure is for the Standing Committee of the NPC to declare upon the establishment of the HKSAR, as well as subsequent to this establishment, which laws previously in force in Hong Kong are in contravention of the Basic Law and shall be amended or cease to have force (Article 160).

One of the effects of such a qualification to the continued applicability of the laws of Hong Kong is to prevent the development of laws prior to 1997 which seem undesirable from the Chinese point of view. The anticipation of future abrogation by the Standing Committee of the NPC inevitably constrains the legislative process of today. The drafting of the bill of rights is a case in point. In view of the human rights record of China, there have been calls, both in England and in Hong Kong, for the promulgation of a bill of rights for the people of Hong Kong. Feasibility studies were started in 1986 under the former attorney general Michael Thomas, but were discontinued at the end of 1987 for unknown reasons. After the Tiananmen Square incident of June 4, 1989, the pressure for a bill of rights was revived, especially from the legal profession, and both the British and the Hong Kong government promised to enact the bill. The original intention was to anchor the bill of rights in such a way as to make human rights supreme. The Chinese government raised objections to the drafting of the bill of rights, pointing to the existence of Article 39 of the Basic Law which stipulates that provisions of the two international covenants on human rights "as applied to Hong Kong" shall remain in force and "shall be implemented through the laws of the Hong Kong Special Administrative Region."[8] China is not a member of either of these covenants and is annoyed with the anti-Chinese context in which the Hong Kong bill of rights has been developed and has vowed to abrogate it, especially if it were placed above the Basic Law. The Hong Kong government has backed down from its original position and has come up with a draft bill which is not constitutionally anchored.

A related question with regard to the autonomy of the Hong Kong system of law concerns the application of Chinese law in the

territory. Hong Kong has won a battle over the enumeration principle, so that national laws of China shall not, according to Article 18, be applied, except for those listed in an annex to the Basic Law. Again, the Standing Committee of the National People's Congress retains the right to control and modify the list of Chinese laws applicable in Hong Kong in the future and to issue, in case of a declaration of a state of war in Hong Kong, an order applying the relevant national laws. As safeguards to Hong Kong's autonomy, the right of the Committee to modify the list of applicable national laws in peace time is confined to those areas "relating to defence and foreign affairs as well as other matters outside the limits of the autonomy" of the HKSAR and tempered by the requirement to consult the Committee for the Basic Law of the HKSAR and her government.

The independent power of the judiciary is guaranteed by Article 2 of the Basic Law and reiterated in different forms by Article 19 and 85. Independent judicial power includes the right of final adjudication, which is to be exercised by the HKSAR Court of Final Appeal to be established before 1997 to replace the Privy Council of the United Kingdom. The judicial autonomy of the HKSAR is, however, excluded over "acts of state." In this case, the courts shall seek a certificate from the Chief Executive who shall, before granting such, obtain a certifying document from the central government.

The greatest restriction on the judicial powers of the HKSAR lies in the interpretation of the Basic Law. In accordance with the Chinese principle of legislative interpretation of the laws, including the constitution, the power to interpret the Basic Law rests with the Standing Committee of the National People's Congress. The Standing Committee shall, however, authorize the courts in Hong Kong to interpret the provisions of the Basic Law which are "within the limits of the autonomy of the Region" (Article 158). With regard to provisions concerning the responsibility of the central government or the relationship between the HKSAR and China, where their interpretation will affect the judgement of cases, the courts of Hong Kong must seek binding interpretation from the Standing Committee. Before giving an interpretation, the Stand-

ing Committee is required to consult the Committee for the Basic Law of the HKSAR.

Development of a Democratic Political System

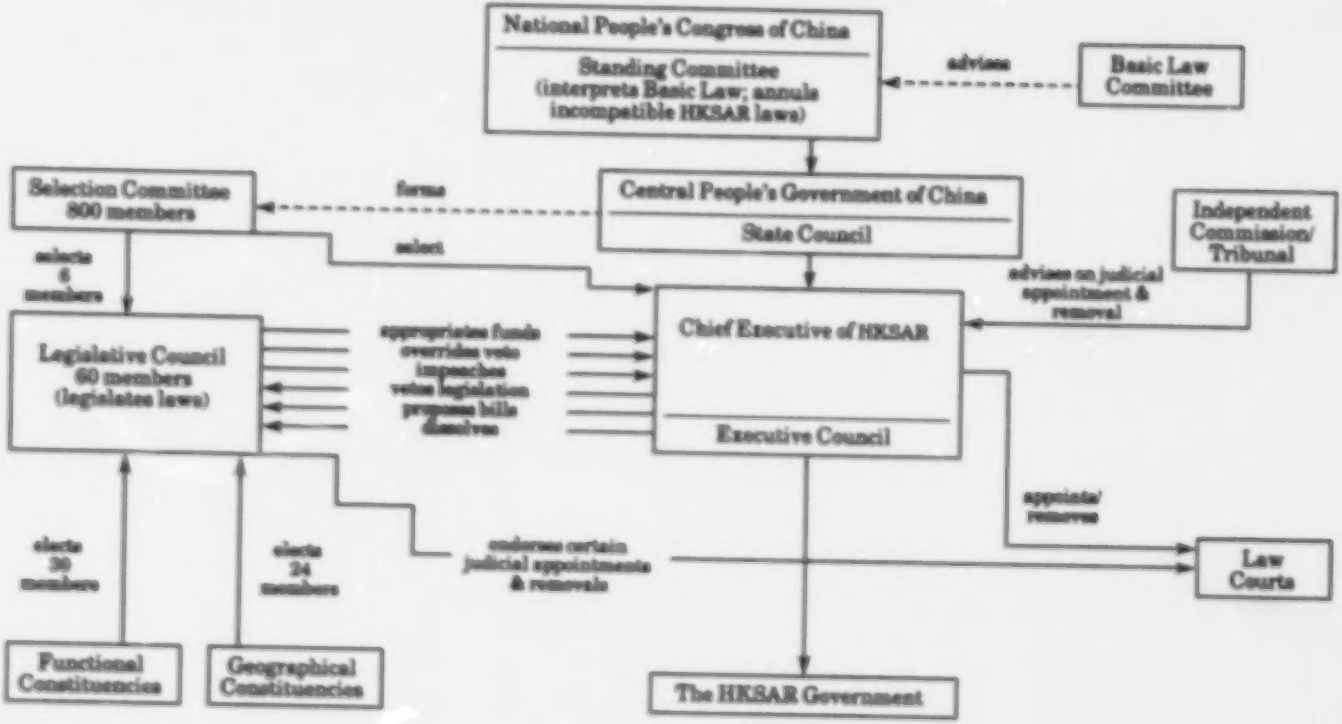
Can a democratic political system be promoted in Hong Kong? The answer is yes, but only in small doses. The Basic Law provides for a powerful chief executive, a legislature with greater responsibility than it currently possesses and a restricted electoral element.

The chief executive is both the symbolic and effective head of the HKSAR government. He is responsible for the implementation of the Basic Law and other laws and directives issued by the central government of China. He has the power to sign bills and to promulgate law. He nominates principal officials for appointment by the central government and appoints or removes judges and holders of public office in accordance with legal procedures. The pivotal role of the chief executive in the future political system of Hong Kong is reflected in his selection, tenure and relationship to the legislative council.

The chief executive is selected by an electoral college for a renewable tenure of five years and is not accountable to, or dependent on, the confidence of the legislative council. The chief executive is assisted by an executive council consisting of principal officials, members of the legislative council and public figures. Appointed by the chief executive, the executive council is not a collegiate body and has only an advisory function, despite the requirement that its opinion must be sought, but not necessarily followed, on important matters.

The chief executive may be checked by the legislative council in the following ways. First, the legislative council may impeach the chief executive for serious breach of law or dereliction of duty by a motion passed by a two-thirds majority of all its members. The motion, however, depends on a prior and positive finding by an independent investigation committee formed by the Chief Justice of the Court of Final Appeal. The final decision in case of a valid impeachment lies with the Chinese central government. Under these circumstances, the power to impeach can only be a last resort

Figure 1
HKSAR AUTHORITY STRUCTURE IN 2020



for the legislative council to tame a powerful chief executive. Second, the chief executive has the power to appoint or remove judges of the courts at all levels in accordance with legal procedures (Article 48(7)). In the case of appointing and removing the judges of the Court of Final Appeal and the Chief Judge of the High court, the endorsement of the legislative council is required (Article 73(7) & Article 90). In all appointments and removals, the legal profession is expected to exercise crucial influence through its membership in both an independent commission formed to recommend judicial appointments and a tribunal for investigating cases of removal (Articles 88 & 89). Since the power of the independent commission and the tribunal of investigation is limited to recommendation only, and the tribunal which would investigate a chief justice's inability to discharge his or her duties is to be appointed by the chief executive,[9] the power of endorsement of the legislative council represents a final counterbalance to the powers of the chief executive. Third, the legislative power of the HKSAR is shared by the legislative council which passes bills and the chief executive who signs and promulgates them. The legislative council may ultimately win in a conflict with the chief executive over appropriations or bills because, although Article 50 confers upon the chief executive the right to dissolve an intransigent legislative council, he must resign if the reconstituted legislative council stands by its predecessor's position (Article 52). In practice, however, it is expected that the chief executive's power to dissolve the legislative council will be a more viable deterrent than the will of that body to unite behind a call for resignation of the head of government.[10] On balance, the political system engineered by the Basic Law is still an executive-centred system.

However, compared with the existing legislature, the future one will be more independent of the executive. Unlike the present arrangement whereby the governor of Hong Kong leads the legislative council, the legislature of the HKSAR will be headed by a president chosen from among its own rank. Furthermore, unlike the present practice, the future council will have neither government officials sitting as ex-officio members, nor members appointed by the chief executive.

While the legislative council of the HKSAR will be more independent of the executive, it will not necessarily be more influential. It is expected that the chief function of the future legislature will be supervising the work of the government by means of debating the policy addresses of the chief executive or other policy issues and summoning persons to testify or give evidence. The power to draft and introduce bills, motions and subordinate legislation is accorded to the government of the HKSAR (Article 62(5)), of which the chief executive is the head. The Basic Law is adamant about restricting private bills in order to strengthen the supremacy of the executive in the making of law and policy. According to Article 74, only bills unrelated to public expenditure, political structure or the operation of the government may be introduced individually or jointly by members of the Council. In addition, the introduction of private bills relating to government policies requires prior consent in writing of the chief executive. Furthermore, Annex II makes it difficult for individual members of the legislative council to oppose government bills by endorsing a principle of "divide and rule". The passage of a private motion requires a majority vote of each of the two groups of members present in the council—members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee.

The issue of democratization in Hong Kong with respect to the method for selecting the chief executive and for forming the legislative council has been the source of most of the controversy since 1984. While the Basic Law recognizes universal suffrage as the ultimate aim for selecting the chief executive and for returning the members to the legislative council, its full introduction is postponed indefinitely, unless in the year 2007 there is a strong consensus for change in Hong Kong. Before then, the arrangements are as follows.

For the first three terms of five years each, the chief executive is to be chosen by a selection committee. The selection committee for the first chief executive will be composed of 400 members from four broad categories of people. It is the responsibility of a preparatory committee appointed by the Chinese central government in 1996 to form such a selection committee. For the

subsequent terms, the selection committee shall be formed according to an electoral law to be enacted by the HKSAR and will be composed of 800 members from four slightly different categories of people. Amendments to this method of selection for the terms after 2007 can only be made with a two-thirds majority of the full legislative council and the consent of the chief executive.

The legislative council shall be composed of 60 members serving for a term of four years, except for the first term which shall be two years only. For the first term, 20 members shall be returned by geographical constituencies through direct elections, 10 by the election committee, and 30 by functional constituencies.[11] According to the idea of a "through train", members returned in 1995 under the British administration may, upon confirmation by the preparatory committee, become members of the first legislative council of the HKSAR in 1997, provided that the composition of the council is as mentioned above; that members pledge allegiance to the Basic Law and the HKSAR; and that members meet the requirements set forth in the Basic Law that they be "Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country", allowing for a rule of exception for 20 percent of the total membership. For the second and third terms of the legislative council, the composition shall be adjusted in favour of the method of direct elections by moving 4 seats from the selection committee category to the direction election category in 2003 and, in 2007, abolishing the category of returning by the selection committee altogether, so that the members of the third legislative council will be returned half by direct elections and half by functional constituencies.

Conclusion

The question of whether Hong Kong's capitalist system and lifestyle can be preserved, a high degree of autonomy maintained and a democratic political system established cannot be answered affirmatively without qualification. The Basic Law is largely a document of compromises, although the Chinese government did enjoy a considerable advantage in bargaining. At the end of the

day, China believes that she has conceded much and has incorporated her initial vague promises into a binding document. The people of Hong Kong, on the other hand, are dissatisfied with the lack of constitutionally-anchored guarantees which are finally justiciable in Hong Kong. The fact remains that the HKSAR cannot avoid becoming a local government within a unitary state, with specifically delegated, statutory powers given to it by a central government that is judicious in safeguarding its sovereignty, as traditionally conceived.

3. DEVELOPMENTS SINCE THE BASIC LAW

The Basic Law is a blueprint for the future of Hong Kong. Political developments in a country do not, however, always conform to the constitutional prescriptions. Whether a high degree of autonomy or the capitalist way of life can be preserved in Hong Kong after 1997 depends greatly on what politicians do during the period of transition. The following sections will address the role of the Basic Law, the policy positions of the principal actors and the major issues of development.

The Role of the Basic Law

There has been surprisingly little discussion of the Basic Law after its promulgation. On balance, its reception in Hong Kong has been lukewarm, although there is praise reported in the leftist newspapers. The conservative and moderate groups have regarded the final arrangements stipulated by the Basic Law as "acceptable". The democrats have vowed to continue their fight for faster democratization. Dame Lydia Dunn, a senior executive councillor, has urged the public to work together to make the 1991 elections a success, so that a case for amending the Basic Law can be presented to the Chinese government. Official statements have been made by the OMELCO (Office of the Members of the Executive and Legislative Council),[12] the governor, and British Foreign Office ministers to the effect that the Basic Law needs to be amended sooner or later. The Legislative Council even passed a motion in

April 1990 to press the National People's Congress in due course for amendments to certain provisions of the Basic Law. The desire to ask for a change in the political arrangements as prescribed by the Basic Law seems therefore quite genuine, but can the Basic Law be changed?

The Chinese side has reiterated that the Basic Law cannot and will not be changed, and unless the Chinese government itself changes there is little chance for any alterations to the Basic Law. As it stands, the Basic Law serves as an important yardstick by which the Chinese government can measure any new development in Hong Kong and exert influence whenever necessary. In fact, it has proclaimed that a new period has already begun in which the key task is the implementation of the Basic Law. According to a statement made by Mr. Zhou Nan, the head of the local New China News Agency[13] on April 6, 1990, major issues that affect the smooth transfer of sovereignty in 1997 must be handled in the spirit of the Basic Law and according to its relevant provisions. (The intervention of the Chinese government in relation to the draft bill of rights is a case in point.) The promulgation of the Basic Law thus signifies a renewed pressure for convergence and a greater presence of China in the political process in Hong Kong.

The Chinese Government and the Issue of Convergence

Recent Chinese initiatives amount to the assertion of a right to be consulted on the major issues of development in Hong Kong. What then are the current, basic positions of the Chinese government? It is beyond doubt that China needs a prosperous and stable Hong Kong. China also believes, at least so far, in the instrumental value of capitalism and freedom for that purpose. The Chinese have also insisted on keeping their promise to give Hong Kong a high degree of autonomy. To these ends, therefore, China must nurture a local political leadership for the future HKSAR which is reliable enough to be entrusted with a high degree of autonomy. As stated by several Chinese officials after the promulgation of the Basic Law, future leaders of Hong Kong must be patriotic and love Hong Kong. However such leadership is not yet in sight and, in its absence, the

Chinese government can hardly avoid the temptation to intervene in the administration of Hong Kong.

The trouble begins with the lack of mutual trust between China and Hong Kong which was exacerbated by the June 4 massacre. Survey findings have established that the people of Hong Kong, the majority of which are Chinese immigrants, do not trust the Chinese government. In private conversations, Chinese officials have also confided their doubts on the sincerity and commitment of the Hong Kong people. Indeed their anti-communist inclinations were laid bare during the democratic movement in Beijing last spring, when one million people, that is, one-sixth of the total population of Hong Kong, demonstrated against the imposition of martial law. The June 4 massacre has dealt a severe blow to the confidence of the people of Hong Kong, aggravated the problem of brain drain, agitated the demand for Britain to offer full citizenship to her colonial subjects, resuscitated the drafting of the bill of rights, unified hitherto opposing groups in a demand for a faster pace of democratization and led to the establishment of numerous groups for the advancement of democracy. The most serious blow to the Chinese government is the defection of her own people in Hong Kong.[14] The tangible support given to the students in Beijing by the Hong Kong people has led the Chinese government to become apprehensive about Hong Kong becoming a subversive base against China and contributed to the late inclusion in the Basic Law of a provision whereby the HKSAR shall enact laws to prohibit acts of subversion against the Central People's Government (Article 23). The whole lesson here is twofold. First, from the perspective of China, there is no local political leadership, including her own elites in Hong Kong, that she can rely on in times of crisis. Second, from the perspective of Hong Kong, the more insecure the Chinese government feels, the less autonomy Hong Kong is likely to enjoy.

Can the Chinese government trust the British government as a protector of Chinese interests in Hong Kong? The answer is clearly no. Grounded in a cynical understanding of British policies of de-colonization, the Chinese government has been disposed to interpret the policies of the British or the Hong Kong government as conspiracies to sabotage China's basic national interest: the

return of sovereignty to China not to the people of Hong Kong. Chinese officials have emphasized that what they mean by the phrase "the previous capitalist system and ways of life shall remain unchanged for 50 years" is the status quo at the time of the Sino-British negotiations. Therefore, even though they do not wish to meddle in the daily administration of Hong Kong, they have reserved their right to intervene when, in their view, the installation of the future HKSAR government is prejudiced, the model of "one country, two systems" jeopardized or even when the present prosperity and stability of Hong Kong is endangered.

In other words, the Chinese government has an interest in retaining the ultimate control over changes in Hong Kong. In doing so, she would prefer the exercise of influence by proxy rather than by overt intervention. One major strategy is the demand for convergence, that is, that Hong Kong must be moved into alignment with the terms of the Basic Law before 1997. The call for convergence is certainly a powerful instrument for China to exert influence on developments in Hong Kong. The reasons are obvious. First, convergence is a desirable objective in the interest of predictability and stability. Second, the Chinese threat that measures or arrangements which diverge will be nullified after 1997 is credible. Third, the cooperation of the Chinese government is needed on many daily operations, such as water supply and border control. Tension, however, arises between the Chinese demand for convergence with the post-1997 arrangements and the British responsibility of administering Hong Kong up to 1997. There is a certain threshold above which the Chinese demand for convergence amounts to a blatant act of intervention. In such a case, British compliance with Chinese demands is seen locally as a dereliction of responsibility as secured by the Sino-British Joint Declaration. The resultant perception of the Hong Kong government as a lame duck administration is then detrimental to the effective governance of Hong Kong during the period of transition.

According to John Walden, the British government conceded in early 1986 the need for pre-1997 developments in Hong Kong to converge with the provisions of the Basic law.[15] Thereafter, the original British attempt to promote the development of representative government in Hong Kong after the signing of the Sino-British

Joint Declaration was interrupted. A recent case of convergence was the agreement between Britain and China in mid-February 1990 on the method of selecting the chief executive and forming the legislative council after 1997, and the introduction of direct elections to the existing legislative council in 1991 and 1995. The agreement falls short of the pace as recommended by the OMELCO,[16] or by the 4-4-2 model[17] which was agreed upon among Hong Kong's three major political groupings (the conservatives, the democrats and the moderates) and thus can be regarded as a consensus of the people of Hong Kong. An unsettled case concerns the bill of rights, which was rekindled by the Hong Kong government after the June 4 incident to alleviate the fear of the Hong Kong people. Upon the protest of the Chinese government, drafters have agreed to live with the straitjacket of the Basic Law. Accordingly, it is certain that those rights will not be entrenched so as to make them paramount in the laws of Hong Kong, as originally promised by the Attorney General Jeremy Mathews in October, 1989. With regard to granting British citizenship to 50,000 households in Hong Kong, the British have, perhaps due to the need of maintaining effective administration up to 1997, stood firm, despite repeated protests by the Chinese government. It is expected, however, that the closer 1997 comes, the more difficult it will be for the British/Hong Kong government to maintain positions that differ significantly from those of the Chinese government.

The Hong Kong Government and the Issue of Governability

Unlike the Chinese government, whose eyes are set on the period after 1997, the Hong Kong government is primarily concerned with the urgent problem of governability up to 1997. It is a taxing task for an outgoing government with declining authority to rule effectively during the transition period.

On the economic front alone, Hong Kong is facing many challenges, including the increasing threat of protectionism and keen competition from low-cost Asian countries. On the political front, there is a mismatch between increasing demands for

government services from a politicized populace and declining commitment to Hong Kong as a result of the continued lack of confidence in its future. Finally, the tide of the brain drain has wide-ranging implications in many fields,[18] particularly in the disciplinary services.[19]

Can the government muster sufficient support for its policies to deal with these problems? The answer must begin with an analysis of the structural flaws in the social basis of political power today. Traditionally, political power in Hong Kong is centered around the governor with his principal advisors (who are expatriates) and the taipans of the big Hongs such as the Hongkong and Shanghai Bank, Jardine & Matheson etc., while local socio-economic elites are coopted into the Executive or Legislative Councils in a personal and advisory capacity. Now, the governor has been subject to severe critique.[20] The expatriate principal advisors are fewer in supply and are set to leave as a result of a localization drive.[21] The big Hongs have moved their place of registration overseas or sought other forms of insurance against unpredictable political consequences, although they will still play along as long as there is profit to earn. The legislative council, whose support for the governor was beyond doubt, has become assertive of its own image. This trend is likely to accelerate with the introduction of direct elections in 1991 as more councillors have to be accountable to the voters, rather than to the governor. Socio-economic elites with long-term political ambition need no longer look to the Hong Kong government as the sole source of satisfaction. The Chinese government as the future master of Hong Kong and the local electorate as a base of legitimacy provide new points of access to power. Even the general public, which has in the past placed high trust in the government of Hong Kong, may look to the local New China News Agency as a shadow government to which grievances against public policies are brought. With these structural flaws in the social basis of power, the ability of the Hong Kong government to perform effectively is likely to be constrained.

The present strategy of the Hong Kong government to deal with this situation is to keep the economy going, while hoping that continued reform in China will provide the political backdrop for a rise in confidence in the future of Hong Kong. The strategy is based

on the realization that the lack of confidence in Hong Kong's future has its deep-seated roots in past practices of the Chinese government and has recently been reinforced by the Tiananmen incident. It may take years for the Chinese government to mend the wounds, but there is not much Hong Kong or its government can do. In fact, the governor has advised the people of Hong Kong to avoid getting involved in Chinese politics as a matter of survival. On the other hand, the positive, economic approach to the future of Hong Kong is free of political hazards. In this regard, two government policies stand out: 1) a heavy investment in physical infrastructure; and 2) a rapid expansion in educated human resources. With the airport and port developments stretching over a decade and costing HK$127 billion (at 1989 prices), Hong Kong may generate a dynamic process of growth attractive enough to keep foreign and local investors busy for years to come. With the rapid expansion in tertiary education from the present 14 percent of the relevant age group, to 25 percent (i.e., 67,000 first degree places) in 1995, preconditions for upward mobility will be provided to a large number of the younger generation, thereby compensating for the loss of talent through the brain drain. These and other policies may make Hong Kong governable.

The Hong Kong People and the Issue of Political Leadership

The political challenge to Hong Kong is unprecedented. It is to be de-colonized without independence. In its journey towards "one country, two systems" it has embarked on uncharted waters. Although the Basic Law has prescribed an institutional framework for the future HKSAR, that framework has yet to be given life by an able and imaginative political leadership. This leadership must be able to provide a better alternative than either "escape and withdrawal" or "fight to change China", the two popular choices for the Hong Kong people after the June 4 massacre. The leadership should also be in place well before 1997, not so much for its ability to straddle 1997 administratively, but to prevent the doomsday scenario from becoming a self-fulfilling prophecy as a result of negative expectations and a sense of powerlessness.

Scholars have often lamented the dearth of political leaders in Hong Kong[22] where the government has never tried to develop a local political leadership. Talents in Hong Kong have gone into the commercial and industrial world. A political career has never been attractive and may be riskier in future. As expatriates have already been excluded from high office by the Basic Law, there remain two major sources of future local political leaders—bureaucrats turned politicians or politicians emerging from electoral and party politics. The former has the advantage of administrative expertise and continuity, the latter political legitimacy. Access to power via the channel of appointment remains indispensable for a while but, in view of its inevitable demise, cannot be expected to provide the core of the future leadership.

Inadequate data precludes much speculation on the bureaucratic route to political leadership. Suffice to say that the people of Hong Kong trust bureaucrats more than other potential political leaders, and the Chinese government is interested in exploring the good will of senior Hong Kong Chinese civil servants. However, the attitudes of Chinese bureaucrats towards a political career remain uncertain. According to Terry L. Cooper and Terry T. Lui, the dominant mentality of civil servants is that of housekeepers and they do not feel that it is their responsibility to enhance peoples' freedom or protect the territory's autonomy.[23] In addition, the present government policy is far from encouraging. There are as yet no formal regulations governing participation of civil servants in political organizations, although there are likely to be restrictions in future guidelines on such participation by senior civil servants. Will civil servants with political ambitions contact or be contacted by the Chinese government or the local New China News Agency? The answer seems to depend on the changing relationship between the British/Hong Kong government. Such contacts were once not allowed, except on official business. Very recently, the secretary for civil services indicated that it is in Hong Kong's interest for its civil servants to know their counterparts in China. In general, a strained relationship between the British or the Hong Kong government and their Chinese counterparts will not be conducive to the development of the bureaucratic route to political leadership. After 1995, the bureaucratic route will take on

importance, especially if elected politicians fail to establish themselves. The selection committee for the first government of the HKSAR will be a significant channel for advancement of bureaucrats-cum-politicians.

Although still limited, the political space for the elites of Hong Kong has expanded. Once excluded from any role in the Sino-British negotiation from 1982 to 1984, local elites were drawn into a long process of consultation on the Basic Law from 1985 to 1989. The apparent need for a local political leadership to take over the departing colonial government in combination with the impending reforms to the composition of the legislative council, open up political opportunities. The general public is mobilizable, as the popular upsurge in last spring suggested. Finally, 1991 is a year of significant political events, as elections are due in March for the 19 District Boards, in June for the 2 Municipal Councils, and in September for the legislative council. The legislative council elections are particularly important in that the method of direct election will be introduced for the first time, returning 18 councillors—2 each from 9 geographical constituencies. Although 18 directly elected members will still constitute a minority, that is 30 percent, in an enlarged 60 member legislative council, its symbolic significance should not be taken lightly. The size of the constituencies, from roughly 100,000 in the New Territories to 250,000 in Central Kowloon, calls for campaign organization. The scene has thus been set so that elites in Hong Kong have to decide whether to enter a political career and, if they decide yes, whether to contest for seats through direct elections or through the functional constituencies. They have also to decide whether to run independently or to align with others.

More than a decade ago, Peter Harris characterized Hong Kong as "an administrative, no party state".[24] It is different today, as some parties have formed and others are in the act of doing so. The process of political alignment is still fluid and the final contour of the party system is still open, but there are observable trends. First, political parties are likely to be small, based primarily on established personalities, and reflect new groups which have sprung up after 1982. Second, political parties tend to be formed along the cleavages developed over the period of consultation on the

Basic Law. For instance, the United Democrats of Hong Kong (UDHK) have drawn much of their strength from the Group of 190 Members of the Committee for Consultation on the Basic Law, which advocated election of the chief executive and the legislative council by universal suffrage by 1997. On the other hand, some activists of the Group of 89 Members of the same Committee, which favoured a slower pace of democratization, are organizing a Liberal Democratic Federation. The moderate groups which succeeded in bringing all groups to agree on a 4-4-2 model for the composition of the legislative council in 1997, remain disorganized and circumspect with regard to their political role. In February this year, however, some pro-China members of the moderate groups, such as Mr. Yiu-chung Tam, Mr. Ho-keung Fung and Mr. Kai-nam Cheng, announced their presence on the political stage by launching an Association for a Better Hong Kong as a think tank on the government's policies. Third, the democratic movement is splitting along two lines: one that is rooted in local politics and organized into a political party (UDHK) and another that is obsessed with Chinese politics and remains a social movement (the Alliance for the Support of the Democratic Movement in China). The UDHK made clear in its inaugural declaration that it will participate or be involved in the politics of China. This is part of a general trend in which political forces in Hong Kong are trying to mend fences with China. Fourth, electoral politics in the years to come are likely to be dominated by three major camps with little difference in ideology: the democrats, the conservatives and the unions. This last point deserves further elaboration.

In the democratic camp, the UDHK has already enjoyed a head start. Led by the outspoken legislative councillor Mr. Martin Lee and, with 216 registered founding members, it appeals to all walks of life, especially to the grassroots of Hong Kong society. Another new party, The Hong Kong Democratic Foundation (HKDF), formed by two legislative councillors, Mr. Jimmy MacGregor and Dr. Che-hung Leong, with a target of 200 founding members, will likely meet with the favour of professionals and small to middle businessmen. Cooperation between the UDHK and the HKDF is likely.

In comparison with the democrats, the conservative camp seemed initially reluctant to engage themselves in electoral politics. For instance, The Hong Kong Foundation (HKF), set up in 1989 by the industrialist Mr. Stephen K. C. Cheong, has insisted on a role as a political think tank for businessmen rather than a political party. However, a Liberal Democratic Federation (LDF) is being organized by Mr. Fa-kuang Hu and Mr. Philip Kwok to primarily represent commercial and industrial interests. The participation by Miss Maria Tam, a legislative councillor and chairperson of the Progressive Hong Kong Society, with an estimated membership of between 300 to 500, will add some grassroots support to the LDF. Finally, if Mr. Allen P.F. Lee, the senior legislative councillor, also joins the LDF, as is reported in the press, the LDF is likely to become a considerable political force.

Hong Kong has traditionally had a weak union movement, with only 18 percent of the total labour force unionized. Union partisanship is easily recognizable but has been insignificant in Hong Kong politics. Most of these trade unions, especially the older ones, have been appendages of the politics of a divided China. In contrast, the newer but independent trade unions are exclusively involved in local affairs, contributing to the initiation of collective bargaining in recent years. The landscape is changing, however, with the announcement that the pro-China Federation of Trade Unions (FTU) will field candidates in the forthcoming elections. The FTU has 82 affiliated unions with about 173,800 members. In the past it has taken a pro-China stand on many political issues but has begun to adopt a more domestic outlook. Its pro-Taiwan rival, the 31,000 member Hong Kong and Kowloon Trades Union Council (HKKTUC) of 69 affiliated unions, has so far not indicated any interest in electoral politics. Mr. Chin-shek Lau, a founder of the new Hong Kong Confederation of Unions (HKCU) has vowed to contest the seats against the FTU. The HKCU is a soon to be inaugurated umbrella organization of independent trade unions. It has 21 founder unions with an estimated membership of about 80,000. All in all, there is a trend toward politicization of unions which deserves further close observation. It is expected, however, that they will remain both deeply divided over the extent to which they should participate in politics and unable to command

unquestioned loyalty from all their members, not to mention non-members.

4. THE PROSPECT

The future of Hong Kong depends ultimately on a vision commonly shared by the Hong Kong government, the Chinese government and the people of Hong Kong, and their joint efforts to realise that vision. Such a vision does not yet exist and this is the major worry with regard to Hong Kong's prospects.

There are at present two contending perspectives to the success of Hong Kong in terms of the continuance of the capitalist system and lifestyle and of the maintenance of a high degree of autonomy. They share the perception that the Basic Law cannot by itself guarantee that success. They differ on what Hong Kong can do. The first approach, advocated by the capitalists, is to keep Hong Kong economically useful to China. The second, dear to the hearts of the democrats, is to develop a locally-rooted representative government. The two perspectives are not necessarily mutually exclusive, but they diverge in their political approach, especially regarding the attitude towards China. The economic approach would like to shun politics in general, and Chinese politics in particular. The argument is basically that if capitalism thrives autonomy will automatically ensue. The democratic approach, however, is politically assertive and has been, until recently, dominated by a desire to erect a bulwark against future communist intervention. The argument here emphasizes the need to fight for democratic autonomy first, otherwise capitalism cannot be maintained. The dialectic relationship between the socio-economic status quo and the future political arrangements is uncertain given the dominance of the China factor, which is itself changing.

The crisis of Hong Kong is therefore also a crisis of identity. It implies a transformation from a split personality which identifies with the cultural China on the one hand while simultaneously being politically alienated from a more integrated existence as it is absorbed forcibly into a socialist China. As the search for stability will require overcoming some ingrained pathologies, the decade

that lies ahead cannot be normal. However, the increasing interaction and interdependency between Hong Kong and China,[25] the pragmatic realization of the Hong Kong people that they have no choice but to work in tandem with China, and the capacity of Chinese leaders for flexibility when the going is good, all suggest that a stable working relationship is not beyond reach.

ANNEX 1 – Hong Kong's Participation in International Organizations

a. *International organizations in which the nature of Hong Kong's participation will remain the same after 1997.*

The General Agreement on Tariffs and Trade (GATT), the Asian Development Bank, the Asian and Pacific Development Center, the Asia-Pacific Postal Union, the Asia-Pacific Telecommunity, the Customs Co-operation Council, the Economic and Social Commission for Asia and the Pacific, the Food and Agriculture Organization, the Intergovernmental Typhoon Committee, the International Atomic Energy Agency, the International Bank for Reconstruction and Development, the International Criminal Police Organization, the International Development Association, the International Finance Corporation, the International Hydrographic Organization, the International Labour Organization, the International Maritime Organization, the International Maritime Satellite Organization, the International Monetary Fund, the International Telecommunications Satellite Organization, the International Telecommunication Union, the Statistical Institute for Asia and the Pacific, the United Nations Commission on Narcotic Drugs, the United Nations Conference on Trade and Development, the Universal Postal Union, the World Health Organization, and the World Meteorological Organization.

b. International organizations in which agreement has yet to be reached with China regarding the nature of Hong Kong's participation after 1997.

The Asian Productivity Organization, the International Civil Aviation Organization, and the World Intellectual Property Organization.

Notes

1. Richard Hughes, *Hong Kong: Borrowed Place, Borrowed Time*, (London: Deutsch, 1968).

2. Victoria island together with the Kowloon peninsula and the remainder of Kowloon were ceded in perpetuity in 1840 and 1864 respectively. The idea of "borrowed place, borrowed time" also applies sociologically to those residents who do not take Hong Kong as their home. Hong Kong has been a refuge for transient immigrants from turbulent China for a good part of the past century. A sense of belonging among the residents to the territory was not established until after the mid-1960s.

3. For details, consult David Bonavia, *Hong Kong 1997: The Final Settlement*, (Hong Kong: South China Morning Post, 1985); Hungdah Chiu, Y.C. Yao, and Yuan-Li Wu, eds., *The Future of Hong Kong: Toward 1997 and Beyond*, (New York: Quorum, 1987); Peter Wesley-Smith, "Settlement of the Question of Hong Kong", *California Western International Law Journal*, Vol. 17, No. 1 (Winter 1987).

4. See Emily Lau, "The Early History of the Drafting Process," in Peter Wesley-Smith & Albert Chen, eds., *The Basic Law and Hong Kong's Future*, (Hong Kong: Butterworths, 1988).

5. According to Chinese constitutional law, the Chinese constitution of 1982 is the supreme law of China. To some people in Hong Kong, maximum legal guarantees for Hong Kong can only be secured if relevant provisions of the Basic Law are anchored directly in the Chinese constitution. Others argue that as there is no rule of law in China anyway, the Chinese constitution itself is no guarantee for

anything and efforts to fight for a better Basic Law for Hong Kong will prove futile.

6. The four cardinal principles, sometimes referred to as 'the four insistences', are insistence on Marxism-Leninism, on Mao Zedong's Thought, on the Socialist Road, and on the Leadership of the Party. They represent the broadest possible ideological consensus achieved since 1979. In 1982, they were adopted in the preamble of the Chinese constitution. They have often been reaffirmed in policy statements of national leaders.

7. The Chinese constitution of 1982 does not subscribe to the concept of separation of powers. Instead, all powers are unified in the NPC. The Central People's Government and the Judiciary are formed by and accountable to the NPC. The NPC, however, meets only once a year for a few days and its great size makes it unwieldy. Thus, its Standing Committee has assumed all practical importance. It enjoys exclusive right to interpret the constitution and the laws and shares with the NPC the right to supervise the implementation of the constitution. It can also enact laws not specifically reserved for the NPC. When the NPC is not in session, the Standing Committee approves plans and government budgets, appoints and removes ministerial personnel and decides on the composition of the National Military Commission, upon the recommendation of its chairman.

8. The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights.

9. In cases other than the chief justice, the tribunal of investigation is appointed by the chief justice instead of the governor.

10. It is reasoned that the legislative council will be fragmented due to the divergent methods of returning its members and as a result of weak party discipline. A two-thirds majority of the legislative council for the purpose of bringing down the chief executive will be hard to come by.

11. Prior to 1985, all members of the legislative council of Hong Kong were appointed by the governor of Hong Kong, except for four ex-officio members—the governor himself, the chief secretary, the financial secretary and the attorney general. In 1985, indirect elections were introduced to the council allowing the return of 12 members elected by an electoral college and functional constituencies. The electoral college is composed of all the members of the Urban Council, the Regional Council and the District Boards. Functional constituencies ensure representation of the economic and professional sectors of Hong Kong society which are deemed essential to future confidence and prosperity. There are now nine such

functional constituencies: commercial, industrial, labour, financial, social services, medical education, legal, engineers and associated professions, with the first three given two seats and the rest one each.

The Basic Law has retained the functional constituencies and replaced the electoral college, based on the municipal and district assemblies, with a Selection Committee based on functional representation. The number of functional constituencies and the election methods are yet to be specified by electoral laws. In addition, the Basic Law has introduced a third method to return members of the legislative council through geographical constituencies by direct election. In Hong Kong, the elections through functional constituencies and the electoral college/Selection Committee are often referred to as indirect elections.

12. The OMELCO serves two primary functions: 1) to assist the non-government members of the Executive and the Legislative Council in their discharge of duties; and 2) to receive public complaints about the administration and to seek redress of grievances if warranted.

13. The local branch of the New China News Agency in Hong Kong has two headquarters, one providing news services and the other playing a political role. In its latter role, the local New China News Agency is the official representative of the Central People's Government of China. Since the start of the Sino-British negotiations in 1982, it has assumed an increasingly active approach in influencing the political process in Hong Kong. It is thus often seen as a shadow government of Hong Kong.

14. The most prominent defector was Mr. Li Zi-song, the publisher of Wen Hui Pao, one of the two major leftist newspapers in Hong Kong. This daily openly sided with the Beijing students and criticized the measures taken by the Chinese authorities on June 4. Also noteworthy was the participation of employees of the leftist institutions, including those from the local New China News Agency and Bank of China, in the demonstrations in support of the democratic movement in Beijing. The exact number of the rank and file leftists who defected remain unknown. A reasoned guess may be derived from some findings reported in a recent M.Phil thesis on "Political Attitudes of Hong Kong Adolescents Towards PRC: A Study of Political Socialization" by Miss Wai-kwan Wan, Department of Government and Public Administration, the Chinese University of Hong Kong. In her sub-sample of students from the leftist schools, the proportion of respondents who reported trust in the Chinese government has declined from 21.7 percent before the June massacre to 2.1 percent thereafter. The corresponding figures for those who reported distrust are 13.7 percent and 77.0 percent. Another indicator of the magnitude of the defection of the leftists is the recent

self-exile of Mr. Xu Jia-tuen, the former director of the local New China News Agency in Hong Kong. One of the charges against him refers to his inability to control China's own camp in Hong Kong during the crisis of last year.

15. John Walden, "The Implementation of the Sino-British Declaration," in T.L. Tsim and Bernard H.K. Luk, eds., *The Other Hong Kong Report*, (Hong Kong: The Chinese University Press, 1989) p. 46.

16. The OMELCO model favours indirect election of the chief executive by an election committee for the first two terms and direct election by universal suffrage from the third term. The model advocates direct election by universal suffrage for the legislature from the third term on. For the first term, members of the legislature should be returned by direct and indirect elections on a 50-50 basis. For the second, the proportion of directly elected members should be raised to 66.6 percent, i.e. 60 seats, while that of indirectly elected ones reduced to 33.3 percent, i.e. 30 seats.

17. The 4-4-2 model shares with the UMELCO model the same views with regard to the selection method for the chief executive. For the legislature, it favours a distribution of 40 percent, 40 percent and 20 percent of seats to be returned by direct election, functional constituencies, and indirect election by a selection committee for the first term. For the second term, indirect election by a selection committee will be discontinued with its seats to be added to the category of direct elections by universal suffrage. The model proposes that the legislature should decide in its second term whether all members be directly elected by universal suffrage from the third term on.

18. Between 1980 and 1986, the number of emigrants fluctuated within a narrow range between 18,300 to 22,400. It rose to 30,000 in 1987. It then soared to 42,000 and 45,000 in 1988 and 1989 respectively. A total of 55,000 emigrants is expected for 1990. The total number of emigrants from 1989 to 1996 is estimated by the government to be around 427,000. It is estimated that less than 10 percent of those emigrants have returned to Hong Kong. It is hoped that the percentage may increase to 20 to 25 percent in 1993.

19. Officers leaving the police force, which has a strength of 27,400, have increased from 625 in 1986-87, through 935 in 1987-88, 1722 in 1988-89 to 1525 so far in this fiscal year.

20. The governor has been accused of appeasing China. See John Walden, "The Implementation of the Sino-British Joint Declaration," in T.L. Tsim & Bernard H.K. Luk, eds., *The Other Hong Kong Report*, (Hong Kong: The Chinese University Press, 1989), pp. 56-62. Mr.

Walden is the former secretary for home affairs in Hong Kong. In the above article, he suggested it is time to appoint a new governor.

21. The policy of localization refers to the appointment of suitable local talents to the higher echelons in the public service. Only local officers are now recruited on permanent and pensionable terms. Traditionally, expatriate officers dominated the higher reaches of the administration in Hong Kong. Of 2,561 officers in the administrative, executive and professional category in 1968, 1,182 were expatriates. There were only ten local administrative officers. The number of expatriates has declined steadily from 3,269 in 1983. In 1988, they made up no more than 1.4 percent of the total civil service. Most expatriates still hold senior posts, i.e. 44 percent (or 469 out of 1,057) in the directorate grade; but local officers in the same grade have increased from 424 to 588.

22. Siu-kai Lau, "Institutions Without Leaders: Hong Kong Chinese' View of Political Leadership," mimeographed.

23. Terry L. Cooper & Terry T. Lui, "Democracy and the Administrative State: The Case of Hong Kong", in *Public Administration Review*, Vol. 50, No. 3 (May/June 1990), p. 337.

24. Peter Harris, *Hong Kong, A Study in Bureaucratic Politics*, (Hong Kong: Heinemann Asia, 1978).

25. This interdependency is well illustrated by the Hong Kong dimension of the MFN status for China. Hong Kong will suffer heavily if the American government did disqualify China from the Most-Favoured-Nation clause. The loss for Hong Kong is estimated at about 20,000 jobs mostly involved in the China trade and about US$10 billion worth of merchandise trade.

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